

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
2004 JUN 29 AM 11:22
U.S. DISTRICT COURT
DISTRICT OF MASS.
NO. 04-10788-1

The Plaintiff in this case requests for appointment
Coounsel on the Following Grounds.

1.) Factual Complexity of the case, the ability of the i
indigent to present his claim and complexity of the
Illegal issues "Addullah v. Gunter 949 F.2d 1032,1035
(8th Circuit). In addition the courts have suggested
that the most important factor is whether the case
appears to have merit. (Cooper v. Sargenti Co. Inc
877 F.2d 170,173 (2nd Circuit 1989)

2.)) The requiring of export testimony supports the
appointment of counsel. Mooore v. Morbus 979
F.2d 268,272 (5t Circuit 1992) Jackson v. County of
McClellan 953 F.2d 1070-1073 (7th Ciircuit 1992) Tucker
v. Randell, 948 F.2d 388,392 (7th Circuit 1994).

3.) Plaintiff's ability to present his case, for
the plaintiff in this case is not a jailhouse lawyer
and must depend on the mercy of others to assist him
in the preperation of this arguement. In addition
this case willl require considerable discovery concernin
-g the facts of the case.

- 4.) Thee indgent abiliity to present his case, for the
Petitioner in this case knows nothing about the law
nor underrstands it to well, as he is not a JailHouse
Lawyer and has had little or no experience other than
thru Attorney's and even this request is being drawn
uup by someone else.
- 5.) The Complexity of the case. In this case therre
are complex, factual legal issues and I do not feel
I could handle it very well. In this it will require
the use of expert testimony in that inwhich involves
Conflicting Testimony.
- 6.)) Large AMOUNT OF WITNESSES which will require
the cours to sort out who was involved in this
alleged "Civil Rights Violation". The Facts
that this case may be tried before a jury,
also supports the appointment of Counsel. Legal
issues that this court may have to consider
are complex enough to support the Appointment
of Counsel including apppp application of
Eighth Amendment Rights "Factual complexity

of an Unconstitutional conduct inwhich thr Petitioner is denied
a Constitutional Right (Fundamental) under the Fourteenth (14)
Amendment of the Constitution. Killela v. Hall 84 F. Supp 204

State Petitioner, petitioning for a Writ of Habeous Corpus
muust exhaust at least one available remedy in State Court
(Inwhich he did) before he can resort to Federal Habeous Corpus
in United States District Court. Geagan v. Gavin 370 U.S. 965.

SIGNED THIS 28 DAY OF JUNE 20004

CERTIFICATION

I HEREBY CERTIFY THAT A COPY OF THIS MOTION WAS SENT
TO THE DEFENDANTS POSTAGE PREPAID

ON THIS 28 DAY OF 2004



JAMES GFFMAN W-50228

p.o. box 43

MCI--

NORFOLK MASSACHUSETTS

02056-00433

U.S DISTRICT COURT
FIRST CIRCUIT

MOTION TO DENIE[MOTION TO DISMISS]

CIVIL ACTION
NO. 04-10788-MEL
U.S. DISTRICT COURT
MASSACHUSETTS
JUN 29 4 11:22
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In this the Plaintiff in this case petitions this Court to
denie the Defendants Motion to Dismiss .

In this the Plaintiff in this case has a right to file
a Writ of Habeous Coprus to This Court under Rules of Criminal
Proceedure Rule 30 (a), 43 M.G.L.A. Com. v. Christian 712 N.E.2d
573.

Motion to release from unlawful restraint, like it's Common
Law forebear's of Habeous Corpus & writ of errors, is entitled
to be distinct from ordinary appeal; this is why a motion for
release maybe filed at any time, unlike an ordinary appeal seeking
plenary review of alleged trial errors.

In essence a Writ of Habeous Corus is the immediate release
of a party deprived of his personal freeedom, that he must be
released from restraint by a particular respondent named in the
Petition (M.G.L.A. 248 @ 1,&25) Hennessy v. Superintendent of
Framingham 438 N.E.2d 329, Crowley 54 Mass App. Court 447.

In this Habeous Corpus proceeding in Federal Court in a
Civil Action contesting legality of restraint of the Petitioner's
Personal Liberty is the only circumstances are presumed which
demonstrate fundamnetal unfairness in trial or the infringement
of importAnt Constitutional Rights, that question of Federal
Dimension arising warrenting intrusion into the Province of

a States Criminal Court U.S.C.A. [2254 a (b)]Hudson v. Justice of Wareham District Court 552 F. Supp 974, U.S. ex rel Bailey v. United States Commanding Officer of the Office of the Provost Marshall U.S. Army 496 F.2d 324.

In this case it appears to be a Double Jeopardy Attachment, by this it is a means of making him do his time twice. He has already done the time with Good-Time Credits and such, but now the Department of Corrections is trying to keep the Plaintiff beyond and over his time. Thus raising a Double Jeopardy. By denying him these days they are in a sense making him do his time all over again. Thus causing a Double Jeopardy claim. The Petitioner in this case has done the Programs but, was denied his good-time for the programs as they promised him. Instead have repeatedly denied him good-time credits for work, programs and such. By doing this they have increased his sentence and thus fallen into a Double Jeopardy Claim, by punishing him again for the same crime.

In this he is challenging the Constitutionality of Custody, thus meeting Habeous Corpus jurisdiction requirement 28 USCA§§2254 (a); USCA Constitutional Amendment 5 80 LEd 2d 311. Under Gamble v. Parson

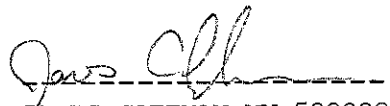
898 F.2d 117, Young v. Lynangh

108 S.Ct 1040 a Petitioner does lack jurisdiction to Consider Habeous due to District Court doesnot lack jurisdiction to Consideration

of the case of conditions of Standard "State of mind issues deliberate indifference, determining whether a prison regulation violate Turner v. Safety. "Reasonable relationship standard" evaluation of the justification to transferring to another State Prison and the Defense of Qualified Immunity.

When a statute or regulation create a liberty interest and when the availability of Post-Deprivation remedies satisfies Due Process claims are often so complex as to require the assistance of Counsel

SIGNED THIS 28 DAY OF JUNE 2004


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02056--0043